

Federal Communications Commission

DA 97-2573

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Eastland and Baird, Texas)

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MM Docket No. 97-242
RM-9192

NOTICE OF PROPOSED RULE MAKING

Adopted: December 3, 1997

Released: December 12, 1997

Comment Date: February 2, 1998

Reply Comment Date: February 17, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Cowboy Broadcasting, LLC. ("petitioner"), licensee of Station KVMX(FM), Channel 236A¹, Eastland, Texas, requesting the substitution of Channel 236C3 for Channel 236A; the reallocation of Channel 236C3 from Eastland to Baird, Texas, and the modification of Station KVMX(FM)'s license to specify Baird as its community of license. Petitioner states it will apply for Channel 236C3 at Baird, if allotted.

2. Petitioner filed its request pursuant to Section 1.420(i) of the Commission's Rules. This provision permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870, 4874 (1989) ("Community of License"), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community MO&O"). In support of its proposal, petitioner states that Baird is a community that has local banking, a

¹ Station KVMX(FM) was modified from Channel 244A to Channel 236A in MM Docket No. 96-10, See Farmersville, Blue Ridge, Bridgeport, Eastland, Flower Mound, Greenville, Henderson, Jacksboro, Mineola, Mt. Enterprise, Sherman and Tatum, Texas; and Ada, Ardmore and Comanche, Oklahoma, 12 FCC Rcd 4099 (1997), recon. dismissed, 12 FCC Rcd 12056 (1997).

functioning school system, a public library, police and municipal services. Petitioner submits that the community has been incorporated for several years and has its own city government. Moreover, it claims that adoption of its proposal will result in a net gain of service to 38,265 persons, while any loss area created will still receive a minimum of five broadcast services. Petitioner states that the reallocation of Channel 229A to Baird is in the public interest as it would provide a first local service to the community and will not deprive Eastland of its sole local existing service.²

3. We believe petitioner's proposal warrants consideration since it would not deprive Eastland of its only local aural transmission service and would provide Baird with its first local aural transmission service. Nonetheless, since petitioner seeks to relocate its transmitter site, there will be areas which will lose existing reception service as well as areas which will gain new reception service. With respect to evaluating proposals to change the community of license, the Commission has stated, "The public has legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating a channel from one community to another." See Change of Community MO&O, 5 FCC Rcd at 7097. Therefore, although petitioner has provided some information in its proposal concerning increases in service, it is requested that petitioner provide more specific data regarding areas and populations which will gain and lose existing service if Channel 236A is reallocated to Baird. The study should also indicate the number of reception services which are available within both the loss and gain areas.

4. Channel 236C3 can be allotted to Baird consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules with a site restriction of 0.3 kilometers (0.2 miles) north to accommodate petitioner's desired site.³ We shall not accept competing expressions of interest in the use Channel 236C3 at Baird or require petitioner to demonstrate the availability of an additional equivalent class channel at Baird.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

² Stations KEAS-AM and KEAS(FM) are also licensed to Eastland.

³ The coordinates for Channel 236C3 at Baird are 32-23-45 NL and 99-23-44 WL.

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Eastland, Texas	236A, 249A	249A
Baird, Texas	--	236C3

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before February 2, 1998, and reply comments on or before February 17, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Cliff Boyd
Cowboy Broadcasting, LLC
1110 South Santa Fe Trail
Duncanville, Texas 75137
(Petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be

accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW, Washington, DC.